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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DAVID HEPBURN,

MEMORANDUM AND ORDER

Plaintiff,

CV 04-4194

-against-

(Wexler, J.)

THE LONG ISLAND RAILROAD
COMPANY,

Defendant.

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APPEARANCES:

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WEXLER, District Judge

This is a case commenced pursuant to the Federal Employer Liability Act, 45 U.S.C. § 51, in which Plaintiff seeks damages stemming from his exposure to second-hand smoke while an employee of the Defendant railroad. This court held a conference on January 5, 2007 and this order memorializes the rulings made at that conference.

First, the court hereby affirms the two rulings of the assigned Magistrate Judge dated July

13, 2006 and September 29, 2006. Pursuant to Rule 72 of the Federal Rules of Civil Procedure this court shall modify or set aside any part of the order appealed from that is “clearly erroneous or contrary to law.” FRCP 72(a). This court has reviewed Defendant’s objections to the orders of Magistrate Judge Orenstein and concludes that the orders appealed from should be affirmed. Accordingly, Defendant’s objections to those rulings are hereby overruled and the orders of July 13, 2006 and September 29, 2006 are affirmed.

The court advised the parties of the rules regarding its pretrial order, in particular, the requirement that all documents to be used at trial be pre-marked and exchanged. The parties were also advised of the court’s practices with respect to the presentation of expert testimony.


The parties requested additional time to complete expert testimony. This request was granted and the following schedule with respect to discovery, motion practice and trial was established. All expert discovery is to be completed by April 15, 2007. Defendant is to move for summary judgment by May 15, 2007. Plaintiff is to respond to the motion by June 5, 2007 and Defendant is to reply by June 12, 2007. The parties are advised to review this court’s rules with respect to the service and filing of motion papers and courtesy copies. Jury selection in this case is scheduled for July 16, 2007 at 8:30 A.M. Trial shall commence on July 23, 2007.

In view of the fact that this court has altered the expert discovery schedule, the court will adjourn the conference currently scheduled before Magistrate Judge Orenstein for March 30, 2007 and will tentatively reschedule that conference for April 30, 2007. This date is contingent upon the schedule of the Magistrate Judge and the parties are directed to contact the chambers of Magistrate Judge Orenstein to determine his availability.

Finally, the Clerk of the Court is directed to note that the pending motions objecting to

the orders of Magistrate Judge Orenstein are denied and those motions should be terminated.

SO ORDERED.


LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE

Dated: Central Islip, New York
January 5, 2007